CIVIL APPEAL.

S.P. Chandra for the appellant.

Lee Leng Guan for the respondent.

Abdul Razak J. This is an appeal against the decision of the President Sessions Court given on February 3, 1976 where he gave judgment for the respondent/plaintiff.

The facts are quite simple. A car was taken by the respondent/plaintiff on hire purchase with the appellant/defendant firm. According to the appellant/defendant, the hirer i.e. the respondent/plaintiff failed to pay the instalments due under the hire purchase agreement. In fact it was alleged two instalments were in arrears amounting to $659.09. The appellant/defendant then issued the necessary notice under section 15(1) of the Hire Purchase Act and failing compliance, the vehicle was repossessed. Consequently, the respondent filed the necessary writ against the appellant saying that the repossession was illegal. The President Sessions Court held the case in his favour ordering the car to be returned. He also awarded special and general damages at $463 and $1,800 respectively.

Before me, the appellant said that the learned President was wrong in his decision. Counsel argued that there has been compliance with section 15 of the Hire Purchase Act regarding the sending of the notice.

Suffice it for me to say having heard the appellant and the respondent that the grounds on which the learned President acted against the appellant seem to be well-founded. Firstly, there was a doubt whether the notice under section 15 was in fact sent on March 1, 1975 to Johore Bharu at the last known address of the respondent because according to DW2, the appellant's director, he sent the notice on the given date from the Malacca Head Office. But apparently a notice was also sent from the Johore Bharu branch on the given date. A receipt for the latter, D4, was adduced which showed that the mail was despatched to the respondent on March 1, 1975. But the question is what was the mail? This must have affected the President's mind. DW2 never corrected his evidence that he did not in fact send the notice from Malacca. Because of the apparent existence of these two notices there would appear to be a doubt as to whether the letter sent by the office boy at Johore Bharu was in fact a notice under section 15. There was another fact to corroborate the doubt. According to DW2, normally he would not send a reminder or reminders if the notice for repossession under section 15 had already been sent. But he admitted he did send reminders to the respondent even after the 1st of March. One will also note that the letter P5 which the appellant sent to the respondent was an A/R Registered letter. The question is why had they resorted to do so if they had sent the notice earlier under a Registered Letter merely, especially as counsel had contended that was all that the law required. It seems to suggest that the earlier letter had not reached the respondent at his proper address. Another fact is also noteworthy. The car had been returned to the respondent although there was a clear threat by the respondent earlier to institute proceedings against the appellant for illegal repossession. It is rather strange that they had opted to return it if they had acted to repossess the vehicle in accordance with the law and procedure.

Secondly, there has clearly been a failure on the part of the appellant to comply with the requirements of section 15(1) in sending the notice purportedly under it. The section reads:

> "Subject to this section, an owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments unless there had been two successive defaults of payments or a default in respect of the last payment and he has served on the hirer a notice, in writing, in the form set out in the Fourth Schedule and the period fixed by the notice has expired, which shall not be less than twenty-one days after the service of the notice."

The section clearly specifies that the period of notice shall be not less than 21 days after the service of the notice before seizure could take place. Obviously it meant that the period specified in the notice for the owner to call upon the hirer to make final payment before seizure must be 21 days which taking the 1st to be the supposed date of service, expires on the 22nd of March. This must be so, otherwise one does not see the purpose for the 21 days requirement. However, the date specified in the notice D2 was the 20th of March which was short of 2 days for the statutory minimum number of days. The notice D2 was therefore bad in law even if served and its effect was therefore null and void.

As to the question of damages it was urged by the appellant that the claim for special damages cannot wholly be sustained because items (a), (b) and (c) in the particulars of special damages were denied by the appellant. But, with respect, that submission was made in the face of the appellant's own admission of their liability to those items of damages which they gave in P(6). There was no evidence to show that P(6) was not properly taken from them.

In the circumstances I dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *S.F. Pang & Chandra; Lee & Co.*

UNITED KENGSOON FINANCE v. SHARIKAT KURUAK SAWMILL SDN. BHD.

[A.C.J. (Abdul Razak J.) October 16, 1976]

[Kuala Trengganu — Civil Appeal No. 5 of 1976]

Practice & Procedure — Memorandum of retainer — Failure to file — Subordinate Courts Rules, 1950, O.7 r.1.

The appellant, a company dealing in hire-purchase vehicles, lent a car on hire-purchase to the respondent. The respondent defaulted in payment and the appellant repossessed the car. The respondent then issued an writ alleging illegality of the seizure. On the date mentioned in the writ, the appellant's solicitor was absent. Instead, a solicitor purporting to be the agent for the appellant's solicitor appeared on his behalf. The respondent's counsel was present. The President, Sessions Court held that the appellant's solicitor had no *locus standi* as the appellant had failed to file his memorandum of retainer under Order 7 rule 1 of the Subordinate Courts Rules. As the appellant was absent, he gave judgment for the respondent.

Held, allowing the appeal: although ordinarily Order 7 rule 1 of the Subordinate Court Rules should be construed

strictly, in this case it appeared that the respondent himself had not complied with the rule as service on the appellant had been effected on the appellant's supposed solicitor. The appellant was therefore left without a remedy.

CIVIL APPEAL.

B.M. Bodipalar for the appellant.

Wee Cheng Huat for the respondent.

Abdul Razak J.: In this appeal the appellant has asked the court to restore his right to set aside the judgment in default entered against him by the President Sessions Court at Kuala Trengganu.

The appellant/defendant was a company dealing in hire-purchase vehicles. A car was lent on hire-purchase to the respondent/plaintiff by the appellant on the usual terms. As usual with some customers, default was made by the respondent/plaintiff to pay up his instalments due. The car was consequently repossessed by the appellant as the owner. The respondent followed it with a writ alleging the illegality of the seizure.

The summons issued asked the parties to appear before the President on a date specified therein. It also asked the defendant to file a defence in due form within the time also specified therein. But on the mention date the defendant's solicitor was absent. A solicitor purporting to be the agent for the defendant's solicitor Mr. Lee Leng Guan was present on his behalf instead. The respondent's counsel was present. It transpired that the respondent's counsel had raised several objections, the principal one being that the appellant/defendant not having duly filed his memorandum of retainer under Order 7 rule 1 of the Subordinate Courts Rules, the appellant's solicitor had therefore no *locus standi* before the President and it followed the solicitor purporting to act for the appellant's solicitor had also no *locus standi*. The President accepted this view and held consequently that since the appellant himself was not present and there was no explanation for his absence the respondent was entitled to judgment in default which he duly gave dismissing the action.

I am constrained to say that ordinarily Order 7 rule 1 must be construed strictly. It means that failure to file the memorandum debars a solicitor from taking any steps for his client. One can quite see the propriety and logic of this requirement. There is no similar provision in the Supreme Court Rules if only because I think in the nature of things the kind and category of people the High Court would be dealing with are assumed generally to be somewhat sophisticated and better informed than those at the Lower Court. Clearly the Subordinate Courts Order is provided with the intention of safeguarding the interest of the public against the evil of those who may claim to act under a cloak of authority when they possess none. It is necessary therefore under those circumstances in order that the public interest is protected that such counsel only are allowed to deal with members of the public whose retention is first made known to the court before they acted. I would say therefore that on that basis the appellant's appeal would have no merit and should be dismissed.

But on the other hand before any application to enter judgment, even if allowed, is made it must be shown first that there has been the necessary compliance with the rules by the plaintiff himself. In this respect it would appear that he has not done so. It is clear that service on the appellant/defendant was effected through the appellant's supposed solicitor although it was clearly shown that he was not on record at that stage to have been retained by the appellant since the memorandum of retainer had not been filed. It is true there had been negotiations between the parties through their counsel prior to the action in court but obviously from their present stand the respondent is saying that that was not a sufficient basis for stating that the appellant's solicitor had been retained by his client. Against this the respondent might say that since it was known that the appellant's solicitor was already informally acting for his client, it was sufficient if service was effected on him although they would still be required to file the memorandum of retainer if and when they chose to act further. But that step would, in my view, clearly be to expose the appellant dangerously to the risk (as it has happened in this case) that his solicitor might make default in filing the memorandum with the resultant consequence that judgment in default might be entered against him although he had no opportunity to appear (and since service was not effected on him in the first place) he was entirely not to be blamed. In my view it is ludicrous to suggest that a party should lose his claim altogether merely because opposite counsel would agree among themselves that they would rely on the other to comply with the rule but for some reason he did not when it was clearly known that since the other counsel did not file his retainer the proper person to have been served in the first place was the opposite party himself. As it was the appellant's purported solicitor was served instead and the appellant was left without a remedy.

I would therefore allow the appeal with costs and order that the judgment of the learned President be set side, with liberty to counsel to apply.

Appeal allowed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones; Adnan & Wee.*

SAK & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Razak J.) November 4, 1976]

[Kuala Trengganu — Criminal Appeal No. 14 of 1975]

Fisheries — Territorial waters — Trawling without licence in territorial waters — Strict liability — Fishery (Maritime) Regulations, 1967, reg. 3(a) — Fisheries Act, 1953, s. 13(1).

The appellants were caught operating a Thai fishing boat inside Malaysian territorial waters off Pulau Perhentian, Besut. They were arrested and charged under Regulation 3(a) of the Fishery (Maritime) Regulation 1967. The appellants denied that they were in Malaysian waters and claimed that they were arrested by the Marine Police 16 miles off Pulau Perhentian, in international waters.

Held, dismissing the appeal: the offence was one of strict liability. The words "found operating" clearly connotes an offence merely by the commission of the physical act of operating regardless of the mental element.